

A LETTER

TO

H. J. JEWETT, Esq.,

President of the Erie Railway Company,

IN REPLY TO HIS

STATEMENT TO THE ERIE SHAREHOLDERS,

Dated May 13th, 1875,

BY

JAS. B. HODGSKIN.

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MAY 29TH, 1875.

H. J. JEWETT, ESQ., *Receiver of the Erie Railway*:

SIR,—Your appointment as Receiver of the property of the Erie Railway Company relieves me from the imputation of seeking to attack the credit of that corporation, the dread of which has heretofore prevented me from replying to certain statements contained in the communication to your shareholders, dated May 13th, 1875.

Commencing on page 8 of the printed copy of your statement, and after referring at length to the lease of the Atlantic & Great Western Railroad to the Erie Railway Company, you say:

“Upon making further inquiries, however, it was found that the statements upon which the lease was based, so far as I was advised of any information having been communicated to this Company, show that for the year terminating on the 30th of September, 1873, the earnings of the A. & G. W. Company were \$5,315,489.13; that the expenses of operating and maintaining the road were \$3,479,522.03; leaving an apparent net earning of \$1,835,957.10.

“By the terms of the lease this Company for the first year was to pay as a rental 28 per cent. of the gross earnings of the A. & G. W. Company; the second year, 29 per cent.; for the remainder of the term, 30 per cent.; and upon this showing of the earnings and expenses for the year 1873, the apparent net earnings of that Company would seem to be equal to the rental to be paid by this Company. But upon a careful examination of the *statement*, and from my knowledge of the condition of the road and its equipment, I was led to doubt its accuracy and to believe that if this Company assumed the control of that road and recognized the obligations of the lease, the proportion of the gross earnings to be paid to that Company would be a substantial loss to this, and result finally to the detriment of both.

“For the purpose of determining *the correctness of this conclusion*, a thorough investigation was instituted.

“In the statement of earnings and expenses referred to no charge for car-service was made, nor was any made in the report of that Company to the Auditor of the State of Pennsylvania for that year. Not doubting that such an expense had been incurred, and ought to have been accounted for as a part of the operating expenses of the Company

for the year, and knowing that the Rolling Stock Company was furnishing engines and cars, an examination was had into the state of the account between these two companies, as set forth in the report of the Rolling Stock Company to its stockholders, by which report it appeared that the amount due to that company from the A. & G. W. Company, for the use of its stock for the fiscal year ending September 30th, 1873, was about \$600,000.

"This was subsequently verified by the statement of the Auditor of the A. & G. W. Company to the President of that Company, November 24, 1874, in which statement he fixed the amount at \$586,164.30.

"The taxes chargeable against the property of a railroad company form a part of its current and operating expenses, and should have appeared in the statement referred to, to have given a correct account of the expenses for that year. Upon examination, however, it was found to be omitted, and, upon inquiry, the amount was found to be \$91,529.29.

"These two items, combined aggregate \$677,693.59, both of which were undoubtedly chargeable to operating expenses. If the A. & G. W. Company had owned the equipment, its maintenance, with the interest upon the investment, would be a charge against the Company. If, instead of owning, they elected to hire or rent, the character of the charge was not changed. This equipment was necessary to the operation of the road, and to its earnings. These two items, therefore, combined would have reduced the apparent net earnings (as given in the statement to which reference has been made) to \$1,158,263.51—an amount much less than 28 per cent. of the gross earnings.

"The expense charged in the statement for maintenance of way was regarded as being exceedingly low, and it was believed that a large amount which should have been charged to that account was disposed of in some other way, either by charging to construction, or by being carried to some other account. This belief has been justified by the printed statement of the proper officer of that company, Mr. Warnock, the Auditor, made November 24, 1874, to the President of his Company, wherein he states that the operating expenses for the year ending 30th September, 1874, included the cost of all the track material used in that year; but he states further that 'if to the operating expenses of the year ending 30th September, 1873, there be added the total cost of material used in the track in that year, *but which was charged to construction*,' amounting to \$671,302.22, it would make the total operating expenses for that year \$4,828,527.84, instead of \$3,479,522.03,

leaving a net earning of \$486,961.29, instead of \$1,835,957.10, as claimed."

The inference to be drawn from the words quoted is plain and irresistible. You do not, indeed, assert, but you intimate, that the Erie Railway Company was induced, by fraudulent misrepresentations, to execute, ratify and confirm a lease the true nature of which it was ignorant of, and that these fraudulent misrepresentations were made by the Atlantic & Great Western R. R. Co.

To show that this inference is not strained, it is only necessary to point to recent editorial in two leading daily journals (extensively copied throughout the country), in which your report is, without any circumlocution, referred to as describing an unsuccessful attempt on the part of the Atlantic & Great Western Company to swindle the Erie stockholders.

Nor does the fact that you only intimate, without distinctly making, the charge of fraud, in any essential way change the situation. For it is generally recognized that gentlemen occupying positions like yours, cannot plead the indefiniteness of their words but are held responsible for all reasonable inferences from their statements. Indeed, in the eyes of right-minded men, an insinuation is more injurious to the person referred to than an actual accusation. In dealing, therefore, with your words as straightforward assertions, I am, while defining their meaning, really diminishing their force, instead of taking anything for granted.

Your words, then, if they have any meaning, mean exactly what I have stated, viz., that the Erie Railway Company was induced, by fraudulent misrepresentations, to make a lease of the Atlantic & Great Western Railroad, in ignorance of its true condition; that these fraudulent misstatements were made by the officers and directors of the Atlantic & Great Western Railroad Company, and that, by dint of "further enquiries," "careful examination," "thorough investigation," by referring "to the auditor of the State of Pennsylvania" and to the "Report of the United States Rolling Stock Co.," you were enabled to discover and expose these fraudulent misstatements.

If Geo. B. McClellan and Abram S. Hewitt are absent in Europe; if Gen. Lloyd Aspinwall and Lawrence Wells feel too secure in their own reputations to need defense; if John Tod, Reuben Hitchcock, and H. Parsons of Ohio, are too far removed from the scene to feel aggrieved; if Gen. J. H. Devereux is restrained by his own position as an officer of court from resenting an attack upon his acts as an officer of the Company; if these and other well-known and honorable gentlemen

are, for any reason, willing or constrained to allow your statements to pass unchallenged, I neither am willing nor can afford to do so. I was a director of the Atlantic & Great Western R. R. Co. and actively connected with its management during the entire period of negotiating the lease, and up to a brief period prior to its execution. I have since represented, and do now represent, important interests largely affected by the lease, and I feel it due to myself, as well as to those interests, to meet with equal publicity your official publication.

I therefore unhesitatingly characterize the implications or insinuations of the foregoing statement as unfounded, and a slander upon the officers and directors of the Atlantic & Great Western R. R. Co.

You say, "upon making further enquiries, it was found that the "statements upon which the lease was based, so far as I was advised of any "information having been communicated to this Company, show, etc." In making so grave a charge as that of fraudulent misstatements against gentlemen of character and reputation, you no doubt took the necessary pains to inform yourself of the facts, and your meaning certainly must be, that after using due diligence you were unable to learn of any information having been furnished to your Company except the false statements of which you complain. But the Erie Railway Company has a board of directors, a competent secretary, records and minutes. Surely a board of directors comprising a number of the leading bankers, merchants, railroad presidents and lawyers of New York, in making a lease of a railroad six hundred miles in length, with a well-known, large and excessive mortgage debt, notoriously in financial difficulties, did not do so without enquiry, without information, without knowledge. Surely there was a board meeting on the subject; there was information furnished; there was discussion; there was a vote, perhaps not even a unanimous one, and the information, the discussion, the objections and the vote are recorded on the minutes of the Erie Company.

Surely some one or more members of the Board first suggested the lease, some one or more advocated it and gave reasons for their advocacy; there was probably a committee appointed to investigate the matter, and that committee must have reported and reported in favor of the lease, and that report with all the information and arguments it contained must have gone upon the records of the Board. Surely some such course was pursued in the management even of the ordinary business of the company.

Surely the very statements you complain of were not found lying loose upon the directors' table, they must have been presented by some

one with some explanation of their purpose and object; and if so presented to your Board, there were at least six gentlemen members of it who could have proved their falsity in five minutes. There is not a railroad man in the United States who does not know that the Atlantic & Great Western Railroad cannot be run for 65 per cent. of its gross receipts, or who would hesitate one instant to characterize a statement to that effect as an impudent falsehood. These statements, therefore, if submitted to your Board, must have led to discussion and argument, and a record thereof must be found upon your minutes.

One of three things must, therefore, be true: Either the Erie Railway Company has no records; or the Board of Directors made the lease without enquiry or discussion; or else the record will show the nature of the enquiry and the discussion resulting from it.

If the Board of Directors made the lease without enquiry, then the gentlemen composing it are indeed more culpable than I, for one, am willing to believe.

If there was enquiry and discussion, the falsity of the statements to which you refer must have been made instantly apparent, and the lease, if based upon these false statements, would have been instantly rejected by a Board of honest men.

As President of the Erie Railway Company, as a man of mature age, of a cautious and diplomatic nature, and a lawyer by profession, you undoubtedly carefully examined the minutes and records of your company in relation to this important transaction, before making the charge of fraudulent misrepresentation, and yet you deliberately put yourself on record as stating that no information was communicated to the Erie Company, except the false and fraudulent statements complained of. I trust for the honor of the gentlemen who then composed the Erie Board of Directors, that this part of your statement is susceptible of explanation.

Indeed, you hint at a possible explanation by using the words "so far as I was advised of any information having been communicated to this Company." But this explanation, if offered, could hardly be considered satisfactory. With the records before you, with your own Board of Directors to refer to, after months of the profoundest consideration of all the points of law and of fact involved in this lease, before deciding whether to accept or reject it, it would be childish to assert that you trusted to any one's "advice" on a subject of so much importance. Besides, even if ill-advised or ill-informed, you would only be justified in repeating the precise nature of your advices or information. Whereas, in making or implying accusations of so

much gravity, you become responsible for the sources of your information. And who, pray, so advised you?

The Atlantic & Great Western Railroad Company prepares every month a tabular statement upon a printed blank form showing in detail the income, the ordinary operating expenses and the balance to credit of income. Upon the same sheet and upon the same side of the sheet, and right next below the words "balance to credit of income," there follow in detail the "deductions from income," of which the first item is: "*Use of foreign cars and engines,*" followed by rental of leased lines, general expenses, *taxes*, etc., etc. This tabular statement or blank is inclosed within a printed framework of lines of various colors, and could not be mutilated without attracting immediate attention. It bears furthermore inside the ruled lines, the heading: "Statement showing the Comparative Earnings, Expenses, *Deductions from Income*, and Net Available Income for Dividends in each Month." Copies of this statement up to the date of delivery, together with copies of every other statement prepared in the Auditor's Department (which is not excelled by the Audit Department of any road in the country), were placed by me personally in the hands of Mr. P. H. Watson, then President of the Erie Railway Company, some days prior to his departure for Europe, in September, 1873, and were accompanied by a further summarised statement in my own handwriting of the debt of the company in all its forms, with the interest accruing thereon.

These statements, furnished to the President of the Erie Railway Company, were and are honest, truthful, comprehensive, explicit and decisive. There was nothing "apparent" about them, nothing requiring a "careful examination" to "test its accuracy" or "determine its correctness." They left no occasion to refer to the auditor of the State of Pennsylvania, or to the auditor of the Atlantic & Great Western Railroad Company, or to the Report of the United States Rolling Stock Company, nor to have the statements of any or either of these verified by the auditor or president of any State, or any company. The statements gave the exact figures (only for eleven months) now given by you (for the entire year), *as obtained from your careful examination and inquiry*, both for the amounts expended for car-hire or rolling stock, \$586,164.30, and taxes, \$91,529.29, and for materials charged or chargeable to Construction, \$671,302.22.

These statements which, with a few trifling corrections (not varying the result \$10,000), are printed in the Atlantic & Great Western R.R. Co.'s Annual Report, are the official statements furnished by the Atlantic & Great Western R.R. Co. to the Erie Railway Co., and no

other official statements were officially furnished to that Company during my connection with the Atlantic Company, or up to the negotiation of the lease. *Upon these truthful, comprehensive and explicit statements the lease of the Atlantic Road to the Erie Company was based*, so far as the Atlantic & Great Western Railroad Company or its officers are aware or are concerned. If any other statements than these, or any statements different from these, were furnished to the Erie Railway Company, I call upon you to produce and publish them; and if you cannot produce them, but continue to be "advised" that such other or different statements have been or were furnished, I call upon you so state who so "advises" you, and who, "in so far as you were advised," made, presented or submitted such statements to the Erie Railway Company.

That statements similar to those false statements to which you refer have been published elsewhere I am well aware. Mr. James McHenry, of London, whose name is also mentioned in your statement in connection with the Second Consolidated Mortgage Bonds of the Erie Company, has recently addressed a circular to the proprietors of the Atlantic & Great Western Railroad, in which occurs the following:

"The business of the Company has been, I believe, admirably conducted by Mr. J. H. Devereux, who succeeded Gen. McClellan, and "in the year 1873, the *net profits applicable to interest and dividend*, "were \$1,920,732."

Mr. McHenry, in publishing anew this pitiful falsehood, has not even your slight excuse, "so far as he was advised," for the same statement having been once before published in almost identical terms in an English newspaper, the Board of Directors of the Atlantic & Great Western R.R. Co., on motion of Mr. Abram S. Hewitt, on the 22d day of January, 1874, adopted the following resolutions:

"Whereas, In the statements of the business of the Company for the fiscal year ending September 30, 1873, forwarded by the Vice President to Mr. James McHenry, there was a statement showing that the total receipts of the road amounted to \$5,315,489.15, and that the cost of operating the road amounted to \$3,479,532.03, showing an apparent surplus of income over operating expenses amounting to \$1,835,957.10; and

"Whereas, By another part of the said statement it was shown that the rent of leased lines, rental of rolling stock and other expenses properly chargeable to income account, or to be deducted therefrom,

exclusive of interest, amounted to \$1,791,569.95, whereby the surplus of income account applicable to interest account was reduced to \$44,387.17; and

"Whereas, In the printed report now submitted to this Board by the President, as received from Mr. James McHenry, the latter part of said table is omitted, whereby there appears to be a surplus of income applicable to interest, which has, however, in fact been already applied to the payment of the just charges above specified; therefore

"Resolved, That this Board does not approve of, and cannot consent to, the publication of any report which does not include all the tables and statements of business forwarded by the President to Mr. James McHenry, and particularly all those which state the lawful charges and expenditures properly chargeable upon, and paid out, of the income of the Company."

A copy of these resolutions was forwarded to Mr. James McHenry, and acknowledged by him; and this publication and its repudiation were promptly brought to the notice of the President of the Erie Railway Company. It is scarcely possible that you have been "advised" that an unauthorized and repudiated newspaper statement not even published in this country, was the basis upon which the Board of Directors and the shareholders of the Erie Railway Company authorized and made the lease of the Atlantic & Great Western Railroad.

It may be well to state in this connection that the lease of the Atlantic road was not advocated by the directors of that company. The magnificent programme of Mr. P. H. Watson on his accession to the presidency of the Erie Railway Company in July, 1872, assumed it as a settled fact that the Atlantic road was to be leased by the Erie. For nearly two years it was an open secret to all the world, including the directors of the Erie Railway Company, and from that time until today the Erie Railway Company has controlled the internal and external policy of the Atlantic & Great Western Railroad Company, has practically appointed and removed its managers, has done a large share of the Erie's own business with that much decried rolling stock which the Atlantic leased, which the Erie for two years used, but which neither of them paid for, and which you, sir, now put forward as one of the reasons, suddenly discovered by your "thorough investigation," and not "so far as you are advised," previously known to the Erie Railway Company, for not carrying into effect the lease of the Atlantic road.

Many of the acts of the Atlantic & Great Western Railroad Company which precipitated, if not actually caused, its bankruptcy, *were forced upon it by the Erie Railway Company*. The Erie, in the spring of 1873, forced the Atlantic into the ruinous purchase of its so-called Second Leased Lines, on the ground that the success of the Erie's plans depended upon it. The preposterous purchase of the Cleveland, Columbus, Cincinnati & Indianapolis shares was first suggested, urged, demanded and finally actually carried out by the Erie; the poor Atlantic yielding a most reluctant consent to the use of its name under the threats of the Erie, which was supposed to already practically own the road, while it was in reality merely using it to snatch the Erie chestnuts from the fire. The United States Rolling Stock Company for months was prevented from putting the Atlantic Company into bankruptcy merely by the representation that the bankruptcy of the Atlantic would destroy the Erie, and that the lease of the Atlantic road by the Erie would make the Rolling Stock Company whole. And now when the insane management of the Erie has bankrupted itself as well as the Atlantic, and has done its level best to bankrupt the Rolling Stock Company likewise, it is rather trying to see the unfortunate shareholders of both companies put off the scent by the cry of stop thief, in the direction of the Atlantic & Great Western, and to find the Erie's refusal to carry out a lease made and dictated by itself, excused on the ground of the sudden discovery by you that the lease was based upon statements "so far as you were advised of any information "having been communicated to the company," which proved false.

I call upon you, sir, to boldly avow, to justify and to prove the damaging insinuations contained in your statement, or else to acknowledge their injustice and withdraw them.

JAS. B. HODGSKIN.

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